IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3164 of 1989

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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ASHOKSINHSPARMAR - Petitioner(s)

Versus

DIRECTOR & 1 - Respondent(s)

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Appearance :
MR YN OZA for Petitioner
MR NAGESH SOOD AGP for Respondents

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CORAM : *HONOURABLE MS. JUSTICE R.M.DOSHIT*

Date : 06/10/2005

ORAL JUDGEMENT

The petitioner, a former Demonstrator in the Government Ayurved Mahavidyalaya, Junagadh, challenges the order of termination of service made on 16th February, 1989.

By Order dated 9th June, 1987 made by the Director of Indian System of Medicines & Homeopathy, Gandhinagar, the petitioner was appointed as a Demonstrator in Class-II Service for a period of one year, or till a candidate duly selected by the Gujarat Public Service Commission was made available; whichever be the earlier. The petitioner was posted at Sheth J.P Ayurved College, Bhavnagar. Since his appointment, by Order dated 1st January, 1989, he was transferred from Bhavnagar to the Government Ayurved Mahavidyalaya, Junagadh. By *impugned* Order dated 16th February, 1989 made by the Director of Indian System of Medicines & Homeopathy, the petitioner's service was terminated with immediate effect. Therefore, the present petition.

Initially, the petitioner challenged the *impugned* order on the ground, *inter alia*, that it was violative of the provisions contained in the Industrial Tribunal Act, 1947, however, in course of hearing learned advocate Mr. Oza conceded that he did not press challenge to the order of termination on the ground that it was violative of the provisions of the Industrial Disputes Act. The petitioner has challenged the *impugned* order on the grounds that it is violative of *Articles* 14, 16, 311 (2) of the Constitution of India and that it was *mala fide* and was

actuated by the reason of a criminal complaint lodged against the petitioner. Thus, the order of termination was though appears to be termination simplicitor was actuated by *mala fides*.

The petition is contested by the State Government. It is stated that the petitioner's service was temporary and ad hoc and was terminable without assigning any reason. The order of termination of service was made in consonance with the terms and conditions of the appointment of the petitioner. It is further stated that the petitioner's integrity was found to be doubtful, his service was, therefore, required to be terminated.

It is evident that the cadre of Demonstrator in Ayurved College was a Class-II service under the State Government. Such appointment was required to be made by the State Government by placement of persons duly selected by the Gujarat Public Service Commission. In absence of such duly selected person, the petitioner came to be appointed as a Demonstrator by Order dated 9th June, 1987 made by the Director of Indian System of Medicines & Homeopathy. Thus, neither the petitioner was selected by the statutory selection procedure nor was he appointed by the competent authority i.e the State Government. The petitioner's appointment was a stop-gap arrangement till

a candidate duly selected by the Gujarat Public Service Commission was made available. In my opinion, the petitioner did not get a vested right to continue in service nor is it the case of the petitioner that his service was ever regularized or that during his temporary appointment, he was duly selected by the Gujarat Public Service Commission. As the petitioner did not have a vested right to continue in service and as the petitioner has not been selected by the Gujarat Public Service Commission, he is not qualified to hold the post of Demonstrator. The petitioner cannot be ordered to be reinstated in service as a Demonstrator. Even if the petitioner's service were terminated for reasons of his involvement in the criminal offence or for the reasons of doubtful integrity as stated in the counter affidavit, no relief as prayed for can be granted to the petitioner sixteen years since the termination of his service.

For the aforesaid reasons, the petition is dismissed. Rule is *discharged*. There shall be no order as to cost.

{Miss R.M Doshit, J.}

*Prakash**